

MULTI-FACILITY AUDIT AGREEMENT
between the
ENVIRONMENTAL PROTECTION AGENCY
and the
STATE UNIVERSITY OF NEW YORK

Introduction

In recognition that environmental auditing plays a critical role in protecting human health and the environment by identifying, correcting, and ultimately preventing violations of environmental regulations, the State University of New York ("SUNY") and the United States Environmental Protection Agency, Region 2 (the "Region") hereby agree that SUNY shall conduct a self-audit program (the "Audit Program") for compliance with the regulations promulgated or authorized by the United States Environmental Protection Agency ("EPA") set forth in Section II below. This Agreement shall be governed by the terms of EPA's policy entitled "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," 65 Federal Register 19618 (4/11/00, the "Policy"), except to the extent that those terms are explicitly modified below.

I. Covered Campuses

This Agreement will apply to all 29 of the campuses operated by SUNY, as well as those community colleges under the program of the State University that have opted to be included in the Agreement. Appendix A attached hereto lists the universities, colleges, community colleges, and other units of SUNY that are covered by this Agreement ("Covered Campuses").

II. Scope of Audit Program

- A. Under the Audit Program, SUNY will audit compliance with the following federal regulatory programs:

1. Air Programs

Part 52,¹Section 21 Prevention of significant deterioration of air quality
Part 60 Standards of Performance for New Stationary Sources
Part 61 National Emission Standards for Hazardous Air Pollutants, Subpart M,
National Emission Standard for Asbestos
Part 63, National Emission Standards for Hazardous Air Pollutants for Source
Categories (all applicable provisions)
Part 68 Chemical Accident Prevention Provisions
Part 70 State Operating Permit Programs
Part 82 Protection of Stratospheric Ozone

¹ The term "Part" refers to the subdivisions of the subchapters of Title 40 Code of Federal Regulations ("C.F.R.").

All applicable provisions of; and the New York State Implementation Plan Regulations (promulgated pursuant to Section 110 of the Clean Air Act) including the New Source Review regulations

2. Water Programs

Part 112 Oil Pollution Prevention

Part 122 EPA Administered Permit Programs: The National Pollutant Discharge Elimination System

Part 144 Underground Injection Control ("UIC") Program

Part 145 State UIC Program Requirements

Part 146 UIC Program: Criteria and Standards

Part 147 State UIC Programs

Part 148 Hazardous Waste Injection Restrictions

Part 403 General Pretreatment Regulations for Existing and New Sources of Pollution

3. Pesticide Programs

Part 160 Good Laboratory Practice Standards

Part 162 State Registration of Pesticide Products

Part 170 Worker Protection Standard

Part 171 Certification of Pesticide Applicators

Part 172 Experimental Use Permits

4. Solid and Hazardous Wastes

Part 260 Hazardous Waste Management System: General (Part 370, 6 New York Code of Rules and Regulations ("6 NYCRR"))²

Part 261 Identification and Listing of Hazardous Waste (Part 371, 6 NYCRR)

Part 262 Standards Applicable to Generators of Hazardous Waste (Part 372, 6 NYCRR)

Part 263 Standards Applicable to Transporters of Hazardous Waste (Part 372, 6 NYCRR)

Part 264 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (Subpart 373-2, 6 NYCRR)

² New York State has been authorized by the Region for many of the federal regulations comprising Parts 260 - 266, 268 and 273. (New York is not authorized for Parts 279 and 280). Once authorized, a state regulation becomes the applicable regulation for purposes of enforcement. [Resource Conservation and Recovery Act ("RCRA"), as amended, §3006(b), 42 U.S.C. §6926(b)]. For purposes of this Agreement SUNY may, at its option, audit for compliance with the federal regulations comprising Parts 260 - 266, 268 and 273, or their authorized New York State counterparts.

Part 265 Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (Subpart 373-3, 6 NYCCR)
 Part 266 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities (Subpart 374-1, 6 NYCCR)
 Part 268 Land Disposal Restrictions (Part 376, 6 NYCCR)
 Part 273 Standards for Universal Waste Management (Subpart 374-3, 6 NYCCR)
 Part 279 Standards for the Management of Used Oil
 Part 280 Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks ("USTs")³

5. Hazardous Substances and Chemicals, Environmental Response, Emergency Planning, and Community Right-to-Know Programs

Part 302 Designation, Reportable Quantities, and Notification
 Part 355 Emergency Planning and Notification
 Part 370 Hazardous Chemical Reporting: Community Right-to-Know
 Part 372 Toxic Chemical Release Reporting: Community Right-to-Know

6. Toxic Substances

Part 745 Lead-Based Paint Poisoning Prevention in Certain Residential Structures
 Part 761 Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions
 Part 763 Asbestos

- B. The facilities and documents to be audited on the Covered Campuses are set forth in Appendix B, in categories a through q. The benefits of this Agreement shall extend to only those state or community college owned facilities within the Covered Campuses that are audited, with the following exception. In recognition of the substantial number and variety of types of facilities comprising SUNY, the audits hereunder, in certain cases, will involve review and inspection of a representative sample of similar facility and document types. Those facilities and documents that will be audited by auditing a representative sample of similar facilities or documents are set forth in categories b, e, f, g and q in Appendix B (the "Sampling Categories"). All facilities and documents within a particular Sampling Category on a particular Covered Campus shall be entitled to the benefits of this Agreement upon completion of the audit of the representative sample within that Sampling Category on that Covered Campus. In the event

³ As indicated in the Region's letter of 6/26/2000, from George Pavlou to Marti Anne Ellermann, potential UST violations discovered at SUNY's Stony Brook campus during inspections by the N.Y. State Department of Environmental Conservation on 12/29/98 and 6/15/00, are outside the scope of this Agreement.

that the audit of a particular Sampling Category on a particular Covered Campus indicates a pattern of pervasive violation, then SUNY shall audit all of the facilities or document types within that Sampling Category, on that Covered Campus, and conduct corrective action, as necessary. A pervasive pattern of violation at a Covered Campus shall be found when violations in a Sampling Category are found in more than 33% of the facilities or document types within that Sampling Category on that Covered Campus. Where violations are discovered within a Sampling Category at a particular Covered Campus that do not rise to the level of a pervasive pattern of violations, the actions taken to prevent recurrence of these violations shall be implemented in all facilities and with reference to all document types within that Sampling Category, on that Covered Campus, except where such actions have previously been implemented.

III. Program Period and Audit Schedule

SUNY will commence the audit process no later than the first day of the month following the month in which this Agreement is executed by both parties (the "Commencement Date"). SUNY shall schedule and conduct campus audits as set forth in Appendix C. All Covered Campuses shall be audited within the 60-month period following the Commencement Date (the "Program Period"). SUNY may substitute a different Covered Campus for one scheduled to be audited in Appendix C, provided that such substitution is limited to a Covered Campus of the same type (i.e., a University Center for a University Center, a Health Science Center for a Health Science Center, a Community College for a Community College, etc.), and further provided that SUNY provides the Region with 60 days notice of such substitution.

IV. Conduct of Audit

Audits will be conducted by external consultants retained by SUNY with the assistance of SUNY personnel.

V. Disclosure, Periodic Reports and Corrective Action

A. Disclosure

SUNY shall disclose all regulatory violations discovered during the Audit Program. SUNY will disclose these violations to the Region, in accordance with the Policy, in semiannual written disclosure reports to be submitted every 6 months after commencement of the Program Period. Each such semiannual disclosure report shall contain, with reference to each violation disclosed, the following additional information: the corrective action selected by SUNY pursuant to subsection B immediately below, to correct the violation; the status of the corrective action; and the means taken by SUNY to prevent recurrence of the violation. The disclosure reports shall also disclose when the violations in a Sampling Category are found in more than 33% of the facilities or document types within the Sampling Category at a particular Covered Campus,

necessitating the extended audit within the Sampling Category at that Covered Campus as required by Section II.B above. The Region waives the 21-day disclosure requirement as required in the Policy. Once the corrective action designed to correct a particular violation has been completed, and a disclosure report submitted to the Region notifying it of the completion of the corrective action, no further reporting on that violation, or the status of corrective action, is required. This Agreement shall terminate for all purposes at the end of the 60th month of the Program Period, except that SUNY shall continue to submit semiannual reports documenting the corrective action status of any previously disclosed violations remaining uncorrected, until such time as all violations have been corrected. The first such post-Program Period report shall also identify any violations discovered during the Program Period that SUNY was unable to timely disclose in its preceding semiannual report.

B. Corrective Action

SUNY shall correct each violation identified during the Audit Program, and shall take those steps necessary to prevent the recurrence of each such violation. Wherever possible, SUNY shall correct any violations identified during the Audit Program within 60 days of discovery, except that when any corrective action requires procurement, SUNY shall have 120 days from the date of discovery to correct a violation. In those instances in which SUNY is unable to correct an identified violation within the time frames provided above, it shall request an extension of time from the Region in writing and provide a corrective action schedule, accompanied by a justification of the requested extension. Any extension of the 60 or 120 day corrective action period shall be subject to the Region's approval. Such approval will not be unreasonably withheld. The Region acknowledges that where a specific corrective action necessitates a request to the New York State Legislature for a capital appropriation, the corrective action period may exceed 120 days.

VI. Regional Inspections and Referrals

A. *Inspections*

During the Program Period, the Region will assign the lowest priority for compliance inspections at SUNY facilities which are within the scope of the Audit Program, as defined in Sections I and II.B, above, and will not target such facilities for inspection under an enforcement initiative, except with respect to potential violations of regulatory provisions which are outside the scope of the Audit Program, as defined in Section II above, or where the Region has received a citizen's complaint, the Region has reason to believe that circumstances exist that may pose a threat of actual harm or an imminent and substantial endangerment to public health or the environment, the Region has reason to believe that a criminal violation has or may have occurred, or where SUNY, pursuant to statute, has notified the National Response Center of a release. Any

civil violation discovered in this manner in a facility or unit, on a Covered Campus, within the scope of the Audit Program, which was either scheduled to be audited subsequent to such discovery, or although previously audited, where the violation existed at the time of the audit, but could not reasonably have been discovered during the audit despite the best efforts of SUNY or its contractors in the conduct of the audit, shall be treated as a disclosure by SUNY and resolved under the terms of the Policy and this Agreement. Additionally, the Region retains the right to conduct, during the Program Period, the inspections set forth in subsections 1 and 2 immediately below.

1. *Oversight Inspections* - Where SUNY has reported a violation which requires corrective action in the nature of a clean-up of contaminated soil or water, the Region shall have the right to conduct inspections at the corrective action site, after providing reasonable advance notice to SUNY and during normal business hours, for the purpose of overseeing or monitoring the clean-up, to assure correction of the violation. No civil penalties shall be associated with or result from oversight inspections.
2. *Confirmation Inspections* - Where SUNY has disclosed a violation, selected a corrective action plan, and reported that the plan has been completed and the violation cured, the Region shall have the right to inspect the corrective action site, after providing reasonable advance notice to SUNY and during normal business hours, to assure that the violation has in fact been corrected, or to require further appropriate corrective action, if it has not. No civil penalties shall be associated with or result from confirmation inspections.

B. Referrals

During the Program Period the Region will refrain from recommending to any other regulatory or enforcement authority that such authority pursue civil enforcement with respect to any violations discovered by SUNY and disclosed to the Region. Referrals for criminal enforcement of disclosed violations, or violations detected during inspections allowed by this Agreement, shall be governed by the relevant terms of the Policy including Paragraphs I.D.3, I.I.2 and II.C.3, 65 FR 19618, 19620, 19624 and 19625 (4/11/2000). The Region reserves the right to disclose to and discuss with any other regulatory or enforcement authority any information the Region may have or findings the Region may make about violations at SUNY.

VII. Civil Penalties for Disclosed Violations

- A. *Gravity-Based Penalties* - Except as provided in Section II.D.8. of the Policy, the Region shall not seek any gravity-based penalties for any violations discovered and disclosed by SUNY during the Program Period. With respect to any gravity-based penalties for such violations as may be sought by the Region pursuant to

the provisions of Section II.D.8. of the Policy, such penalties will be limited as follows:

1. For contravention of an existing judicial or administrative order: no additional penalty beyond payment of such penalty amount as may be stipulated in such order.
 2. In the absence of gross negligence, the gravity-based penalty for any violation that causes serious actual harm, and for any violation that constitutes imminent and substantial endangerment to human health or the environment, shall be limited, per violation, to the amount of the maximum daily penalty authorized by the applicable statute, provided that SUNY undertakes timely corrective action and implementation of procedures to prevent recurrence in compliance with Section V.B above.
- B. *Supplemental Environmental Projects* - The Region recognizes that it has, and agrees to utilize its enforcement discretion in the matter of whether or not to seek gravity-based penalties for conduct which results in imminent and substantial endangerment to human health and the environment. In lieu of the payment of any assessed gravity-based penalty, SUNY and the Region may agree to the performance by SUNY of a Supplemental Environmental Project ("SEP") of equal value. Whether a particular SEP may be performed in lieu of payment, and its value, shall be determined in accordance with EPA's current SEP Policy, 63 Federal Register 24796 (5/5/98), or EPA's successor SEP policy current at the relevant time.
- C. *Economic Benefit Penalties* - The Region acknowledges that SUNY will expend significant resources to undertake the Audit Program and to correct any deficiencies discovered in the course of the Audit Program. The Region further recognizes that SUNY's voluntary audit efforts will conserve the Region's resources. In consideration therefor:
1. The Region shall consult with SUNY if the Region believes that the imposition of an economic benefit penalty may be appropriate and shall take into consideration the least expensive means for coming into compliance when calculating potential economic benefit penalties with respect to any disclosed violations, provided that the method utilized complies with regulatory requirements.
 2. Where the economic benefit that may have been realized as a result of non-compliance is \$10,000 or less, per Covered Campus, per violation, the Region will waive the economic benefit penalty as de minimus.

VIII. Miscellaneous Provisions

- A. *Notification and Certification of Disclosure Reports* – SUNY designates as its “responsible official,” responsible for submitting disclosure reports to the Region, the following individual:

Richard P. Miller, Vice Chancellor and Chief Operating Officer
The State University of New York
State University Plaza
Albany, New York 12246

Telephone: (518) 443-5804
Fax: (518) 443-5603

The responsible official shall certify that each disclosure report submitted to the Region is true, accurate and complete in the form set forth in 40 C.F.R. §270.11(d).

SUNY designates as its “contact person,” to be the recipient of all communications from the Region concerning this Agreement, the following individual:

Ms. Barbara A. Boyle
Office of the University Counsel
The State University of New York
State University Plaza
Albany, New York 12246

Telephone: (518) 669-7333
Fax: (518) 475-7703

A copy of all notices or other written communications sent by the Region to SUNY’s responsible official or contact person, should be sent to:

Marti Anne Ellermann, Esq.
Senior Managing Campus Counsel
Office of the University Counsel
The State University of New York
State University Plaza
Albany, New York 12246

The Region designates the following individual as its contact person:

Ms. Michelle Josilo
Audit Policy Coordinator
DECA/CAPS
U.S. Environmental Protection Agency, Region 2
290 Broadway (21ST Floor)
New York, New York 10007-1866

Telephone: (212) 637-4084
Fax: (212) 637-4086

The parties may redesignate their contact person in writing.

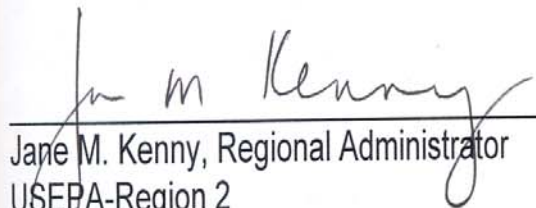
- B. Compliance with Law and Regulation – Neither the existence of this Agreement, nor compliance with this Agreement relieves SUNY of its obligation of continued compliance with the regulations covered by this Agreement, and all other federal, state and local laws and regulations.
- C. *Reservation of Right* – The Region reserves its right to proceed against SUNY for all violations outside the scope of the Audit Program and all violations within the scope of the Audit Program that were not reported or corrected. In any enforcement proceeding, the Region may enforce the provision of 40 C.F.R. allegedly violated, or its New York State authorized or approved counterpart, if said state counterpart is federally enforceable as a matter of law. SUNY reserves the right to contest administratively and judicially any EPA determinations hereunder.
- D. *Authority of Signatories* – The signatories hereto represent that they have the authority to bind the parties.
- E. *Modification* – This Agreement may be modified by a writing signed by both parties.

For the State University of New York


Robert L. King, Chancellor
The State University of New York
State University Plaza
Albany, New York 12246

Date: 4/1/2002

For the United States Environmental Protection Agency, Region 2


Jane M. Kenny, Regional Administrator
USEPA-Region 2
290 Broadway
New York, New York 10007

Date: 4/1/02

Appendix A

STATE UNIVERSITY OF NEW YORK

University Centers (4)

State University of New York at Albany
State University of New York at Binghamton
State University of New York at Buffalo
State University of New York at Stony Brook

Health Science Centers (2)

State University of New York Health Science Center at Brooklyn
State University of New York Health Science Center at Syracuse

University Colleges (13)

State University College at Brockport
State University College at Buffalo
State University College at Cortland
State University College at Fredonia
State University College at Geneseo
State University College at New Paltz
State University College at Old Westbury
State University College at Oneonta
State University College at Oswego
State University College at Plattsburgh
State University College at Potsdam
State University College at Purchase
State University of New York Empire State College

Specialized Colleges (4)

State University of New York College of Environmental Science & Forestry (Syracuse)
State University of New York College of Optometry (New York City)
State University of New York Institute of Technology at Utica/Rome
State University of New York Maritime College (Fort Schuyler)

Colleges of Agriculture and Technology (6)

State University College of Technology at Alfred
State University College of Technology at Canton
State University College of Agriculture and Technology at Cobleskill
State University College of Technology at Delhi
State University College of Technology at Farmingdale
State University College of Agriculture and Technology at Morrisville

Appendix A (continued)

COMMUNITY COLLEGES

Adirondack (Queensbury)
Broome (Binghamton)
Cayuga (Auburn)
Clinton (Plattsburgh)
Columbia-Greene (Hudson)
Corning Community College (Corning)
Dutchess (Poughkeepsie)
Fashion Institute of Technology (New York)
Finger Lakes (Canandaigua)
Fulton-Montgomery Community College
Genesee (Batavia)
Herkimer
Hudson Valley (Troy)
Jamestown
Jefferson (Watertown)
Mohawk Valley (Utica)
Monroe (Rochester)
Nassau (Garden City)
Niagara County (Sanborn)
North Country (Saranac Lake)
Onondaga (Syracuse)
Orange County (Middletown)
Rockland (Suffern)
Schenectady
Suffolk (Seldon)
Sullivan County (Loch Sheldrake)
Tompkins Cortland (Dryden)
Ulster County (Stone Ridge)
Westchester (Valhalla)

Appendix B

SCOPE OF AUDIT PROGRAM

Review and/or inspection at each campus will include:

- a. Hazardous waste storage areas.
- b. Representative sample (minimum 20%) of hazardous waste Satellite Accumulation Areas.
- c. Facilities treating, storing or disposing of hazardous wastes.
- d. Facility maintenance buildings, including automotive and truck servicing areas.
- e. Representative sample (minimum 20%) of all teaching and research laboratories with regular chemical use.
- f. Representative sample (minimum 20%) of clinical and dental laboratories.
- g. Representative sample (minimum 20%) of Art Studios including scene shops with regular chemical use.
- h. Commercial graphic arts facilities and print shops.
- i. Greenhouses and farms.
- j. Heating and power plants.
- k. Athletic training facilities.
- l. Pesticide storage facilities
- m. EPA identification numbers.
- n. PCB transformers and switches.
- o. Aboveground and current operating underground storage tanks and their containment areas/systems, and documentation concerning closures of regulated tanks previously removed from service.
- p. Dry wells, septic systems serving more than 20 people per day, cesspools, and disposal wells.
- q. Representative samples of required documents including hazardous waste manifests, training records, land disposal restriction notifications, exception reports, contingency plans, and annual reports, for the three years prior to the Program Period, with the exception of contingency and other plans where only the current plan will be reviewed.

Appendix C**SCHEDULE BY YEAR**

Year 1	Binghamton University	1
	Health Science Center	0
	Fredonia	1
	Specialized Colleges	0
	Cobleskill Agriculture and Technology	1
	Monroe Community College	1
Year 2	Albany	1
	Upstate Health Science Center	1
	Cortland, Purchase, Potsdam	3
	Environmental Science and Forestry	1
	Delhi Agriculture and Technology	1
	FIT, Nassau, Sullivan Community Colleges	3
Year 3	University Centers	1
	Health Science Centers	0
	University Colleges	3
	Specialized Colleges	1
	Colleges of Agriculture and Technology	1
	Community Colleges	7
Year 4	University Centers	1
	Health Science Centers	1
	University Colleges	3
	Specialized Colleges	1
	Colleges of Agriculture and Technology	2
	Community Colleges	10
Year 5	University Centers	0
	Health Science Centers	0
	University Colleges	3
	Specialized Colleges	1
	Colleges of Agriculture and Technology	1
	Community Colleges	8

The names of campuses to be audited in Years 3, 4 and 5 will be provided no later than three months before the start of the applicable Year.